IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1624 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JEEVAN COMMERCIAL CO-OPERATIVEBANK LIMITED

Versus

BHARATBHAI BHIKHABHAI MAKWANA

Appearance:

1. Special Civil Application No. 1624 of 2001

MR HARIN P RAVAL for Petitioner No. 1-5

MR RAVINDRA SHAH for Respondent No. 1-2

NOTICE SERVED BY DS for Respondent No. 1

RULE SERVED BY DS for Respondent No. 3-18

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/12/2004

ORAL JUDGEMENT

1. The petitioners herein have preferred this petition in order to quash and set aside the impugned judgment and order dated 13/02/2001 passed by the Gujarat State Co-operative Tribunal in Appeal No.674 of 1998 arising from the judgment and order dated 17/10/1998

passed by the Board of Nominees, Rajkot.

2. The petitioner Bank is a Co-operative Society duly registered under the provisions of the Gujarat Co-operative Societies Act, 1961. A suit being Arbitration Suit No.358 of 1998 was filed by respondents no.1 & 2 herein before the Board of Nominees, Rajkot, against the petitioner Bank for restraining the petitioner Bank from calling the Annual General Meeting of the Board of Directors. Respondents no.1 & 2 filed application exh.4 in the aforesaid suit, whereby ad-interim injunction was granted in favour of the respondents. Pursuant to the above, the petitioner Bank preferred Revision Application before the Gujarat State Co-operative Tribunal. The Tribunal vide order dated 18/07/1998, restrained the petitioner Bank from conducting business with respect to Agenda Item No.5.

3. The Board of Nominees, Rajkot, vide order dated 17/10/1998 passed in Arbitration Suit No.358 of 1998 dismissed the suit preferred by respondents no.1 & 2 herein. Feeling aggrieved by the said order, the respondents no.1 & 2 preferred appeal being Appeal No.674 of 1998 before the Gujarat State Co-operative Tribunal. By order dated 13/02/2001 the said Appeal was allowed. Hence, this petition.

4. Mr.Harin P Raval learned advocate for the petitioners has submitted that qua elections, the terms of petitioners no.2 to 5 are over, and therefore, rule may be made absolute in terms of the ad-interim relief granted earlier. He has further submitted that the order of the Tribunal to the extent of quashing and setting aside bye-law No.18(3) is without any jurisdiction and it has to be held to be illegal.

5. Mr.Raval has contended that under Section 13 of the Gujarat State Co-operative Societies Act, 1961, the Society is empowered to amend its bye-laws, and, if any bye-law is found to be inconsistent with the provisions of the said Act, then Section 14 of the Act envisages that the competent authority shall have the power to issue directions for the amendment of the said bye-laws. He has submitted that the Tribunal has no jurisdiction under Section 150 of the Act to issue such directions and to quash the bye-laws. He has emphasized that since the Tribunal had no jurisdiction, it could not declare bye-law No.18(3) to be contrary to Section 28 of the said Act as well as contrary to Rule 15 of the Gujarat Co-operative Societies Rules, 1965, and therefore, the impugned order is required to be quashed and set aside.

6. Mr.Ravindra Shah for the respondents has submitted that as per bye-law No.18 a Delegate for once will be a Delegate for all time to come and that other persons will have no chance to be a Delegate or Representative of that person.

7. I have heard learned counsel for the parties and perused the relevant documents on record. Now, even if the contention raised by Mr.Shah is presumed to be correct, then also the appropriate remedy that may be available to the respondents would be to approach the competent authority under Section 14 of the said Act for the issuance of directions against the Society. This being a primary Society the principles of federal Society will not be applicable.

8. Therefore, I am of the opinion that the Tribunal had no jurisdiction to set aside the bye-laws of the Society and that to in an Appeal against the decision of the Board of Nominees. Hence, the order of the Tribunal is required to be quashed and set aside.

9. For the foregoing reasons, the order of the Gujarat State Co-operative Tribunal dated 13/02/2001 passed in Appeal No.674 of 1998, cancelling bye-law No.18(3), is quashed and set aside. However, it will be open for respondent no.1 original plaintiff or for any other member of the petitioner Bank to file application before the appropriate authority for amendment in bye-law No.18(3). The said amendment shall be subject to the legal rights of both the sides. Rule is made absolute to the above extent and in terms of the ad-interim relief.

(K. S. Jhaveri, J.)

pravin/